Filed 12-12-01

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. VICTOR MANUEL CEBREROS-MEJIA, Defendant and Appellant.	F037200 (Super. Ct. No. 80707) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Arthur E. Wallace, Judge.

Barbara Michel, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, and Wanda Hill Rouzan, Deputy Attorney General, for Plaintiff and Respondent.

-ooOoo-

---

*Before Dibiaso, Acting P.J., Levy, J., and Cornell, J.

Appellant Victor Manuel Cebreros-Mejia appeals from the trial court's refusal to suppress evidence pursuant to Penal Code section 1538.5. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the afternoon of May 10, 2000, California Highway Patrol (CHP) Officer Joel Brock observed appellant driving along Highway 99 south of Bakersfield. Officer Brock noticed neither appellant nor his accompanying passenger were wearing seatbelts and pulled them over to cite the violation.

At Officer Brock's request, appellant produced a valid Oregon driver's license, proof of insurance, and vehicle registration indicating he was not the registered owner. Appellant told Officer Brock he had been living and working for the past eight months in Long Beach, California. Appellant also told the officer he had borrowed the car from a friend, but could not remember the friend's name or address.

Officer Brock ran a computer check and discovered appellant was unlicensed in California. The officer cited appellant for being an unlicensed driver. (Veh. Code, § 12500, subd. (a).) Because neither appellant nor his passenger were legally licensed, Officer Brock informed them he would impound the car and began a vehicle inventory search following standardized CHP procedures.

During the inventory, Officer Brock noticed the backseat armrest was down and the plyboard separating the seat from the trunk had been removed and replaced with a flap of leather-like material. The flap exposed a clear view of the trunk and the fuel sending unit on top of the fuel tank. Officer Brock observed the car's wiring harness had been slightly removed, some wires had been cut, and the fuel sending unit was missing. Officer Brock found the alterations unusual because a car normally cannot function without the sending unit. The officer shined his flashlight into a hole approximately one-half inch in diameter where the wiring harness should have fit into the fuel sending unit

and saw some red and clear cellophane packages. Based on his experience and training, the officer believed the packages contained large quantities of narcotics.

Officer Brock then arrested appellant and the passenger. Upon further investigation, Officer Brock discovered the fuel tank had been altered and an electronically activated door had been placed over the fuel sending unit creating "a hidden compartment for narcotics smuggling." The compartment contained 25 packages of what the officer believed amounted to 24 and one-half to 25 pounds of methamphetamine.

The Kern County District Attorney subsequently charged appellant with transportation of a controlled substance (Health & Saf. Code,[1] § 11379, subd. (a)), possession of a controlled substance for the purpose of sale (§ 11378), concealment of drugs in a false compartment (§ 11366.8, subd. (a)), and several large quantity enhancements (§ 11370.4, subd. (b).) Appellant pled not guilty and moved to suppress the evidence based on an illegal search and seizure. (Pen. Code, § 1538.5.) On September 12, 2000, the trial court denied appellant's motion.

Appellant entered a negotiated plea admitting transportation of methamphetamine in excess of four kilograms. (Health & Saf. Code, §§ 11379, subd. (a), 11370.4, subd. (b)(2).) On October 16, 2000, the trial court sentenced appellant to a nine-year prison term.

DISCUSSION

Appellant contends the trial court erred in denying his motion to suppress the evidence because Officer Brock's vehicle stop and subsequent inventory search were pretexts to rummage through the vehicle. Appellant further contends there was no

---

[1] All further statutory references are to the Health & Safety Code, unless otherwise indicated.

evidence the officer followed standardized criteria or established routine in conducting the inventory search. We find the court properly denied the motion.

The standard of appellate review for a ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, supported by substantial evidence and exercise our independent judgment to resolve the question of law of whether the search or seizure was reasonable under the Fourth Amendment of the United States Constitution. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

If a police officer has probable cause to believe a traffic violation has occurred, the officer may stop the car, arrest and search the driver, conduct an inventory search, and impound the car. (*People v. Patterson* (2001) 92 Cal.App.4th 561, 566.) "An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage." (*Wren v. United States* (1996) 517 U.S. 806, 811, fn.1.) Because of the "routine administrative caretaking functions" of inventory searches, they are not subject to the warrant requirement of the Fourth Amendment. (*Colorado v. Bertine* (1987) 479 U.S. 367, 371.) An inventory search may not be a "'ruse for general rummaging in order to discover incriminating evidence,'" but the subjective intentions of law enforcement do not invalidate otherwise objectively justifiable behavior under the Fourth Amendment. (*Wren v. United States, supra,* 517 U.S. at p. 811; *People v. Velenzuela* (1999) 74 Cal.App.4th 1202, 1207-1208.)

Regardless of any predisposed suspicion or ulterior motives, probable cause justified Officer Brock's conduct.

The officer first observed appellant and his passenger driving along Highway 99 without seatbelts in violation of Vehicle Code section 27315, subdivision (h). An officer's observation that a driver is unbelted is sufficient to justify a stop. (*Kodani v. Snyder* (1999) 75 Cal.App.4th 471, 476-477.) In connection with the valid traffic stop, Officer Brock learned appellant and his passenger were both unlicensed in California.

The Vehicle Code restricts driving on California highways to holders of California licenses, subject to specific exceptions. (Veh. Code, § 12500, subd. (a).) While a nonresident of California may legally drive on California highways, a California resident must obtain a California license within 10 days of becoming a resident. (Veh. Code, §§12502, subd. (a)(1), 12505, subd. (c).) Residency is defined as the "state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent." (Veh. Code, § 12505, subd. (a).)

Officer Brock asked appellant where he lived. Appellant replied he had been living in Long Beach, California, for the past eight months. Appellant also told Officer Brock that he worked at an automotive shop in Compton, California. Based on appellant's admissions, Officer Brock could reasonably conclude appellant was a California resident, and therefore violated the Vehicle Code by driving without a California license.

Officer Brock then properly exercised discretion under Vehicle Code section 14602.6: "Whenever a peace officer determines that a person was driving a vehicle … without ever having been issued a license, the peace officer may … immediately arrest that person and cause the removal and seizure of that vehicle …." An officer's decision to impound must be reasonable under the circumstances, such as here where neither the driver nor passenger are licensed or the registered owner of the vehicle. (*People v. Steeley* (1989) 210 Cal.App.3d 887, 892.)

In furtherance of the valid inventory search, Officer Brock discovered, in plain view, after-market structural changes to appellant's car that would normally render a vehicle inoperable. Based on Officer Brock's training and experience that narcotics traffickers often create concealed compartments to transport illegal drugs, the alterations gave rise to Officer Brock's reasonable suspicion that criminal activity was afoot. Independent of the inventory search, the officer's observations justified further

investigation to determine the source and purpose of the alterations. Officer Brock shined his flashlight into an area behind the backseat and discovered what he concluded was a large amount of a controlled substance. Officer Brock's conduct constituted nothing more than legitimate law enforcement activity that ultimately unveiled a distinct but larger criminal law violation.

Appellant further contends "there was no evidence that Officer Brock followed standardized criteria or established routine regarding the inventory search." To the contrary, Officer Brock testified he followed standardized CHP procedures. He explained he started in the right front of the vehicle and worked around the vehicle in a clockwise motion. On cross-examination, appellant's counsel asked Officer Brock about the procedures, but specifically asked him to limit his response to only the most basic explanation:

> "Q. Can you explain briefly without a long dissertation, what are the basic steps that the Highway Patrol demands an officer comply with for impound inventory? [¶] … [¶]
>
> THE WITNESS: That you inventory anything in the vehicle. And anything of value, list it in the narrative portion of the CHP 180 form."

Appellant contends the record lacks evidence as to whether the CHP policies were written and whether they contemplated Officer Brock's actions and exercise of discretion. However at trial, appellant never questioned whether Officer Brock acted within the ambit of the CHP's procedures; moreover appellant specifically limited the officer's testimony regarding the procedures on cross-examination.

In *People v. Williams* (1999) 20 Cal.4th 119, 136, the Supreme Court explained that the scope of appellate review of a motion to suppress is limited to the issues raised at trial. "'This is an elemental matter of fairness in giving each of the parties an opportunity adequately to litigate the facts and inferences relating to the adverse party's contentions.'" (*Ibid*.) The *Williams* court held the defendant did not waive the issue

regarding a law enforcement policy of opening closed containers during an inventory search because the defendant had challenged the existence of such a policy and cited similar caselaw to the trial court. (*Id*. at p. 137.)

Unlike in *Williams*, appellant raises a different legal theory on appeal than raised at trial. Appellant's suppression motion did not challenge whether Officer Brock properly followed the CHP inventory policy or whether the policy itself was constitutional. Instead, appellant's trial motion was based on the lack of warrant, consent, or other justification for the search and the permissible scope of inventory searches. Finding the issues distinct, appellant has waived the issue for appeal.

In summary, regardless of any subjective intent on the part of Officer Brock, probable cause supported each independent action resulting in evidence properly admissible under the Fourth Amendment. Accordingly, the trial court appropriately denied appellant's motion to suppress.

DISPOSITION

The judgment is affirmed.